

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 380

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO PRIVATE INVESTIGATORS; AMENDING LICENSING
REQUIREMENTS UNDER THE PRIVATE INVESTIGATIONS ACT; IMPOSING
PENALTIES ON PRIVATE PATROL OPERATORS WHO HIRE AN UNLICENSED OR
UNREGISTERED PATROL EMPLOYEE; INCREASING EXISTING PENALTIES IN
THE PRIVATE INVESTIGATIONS ACT; AUTHORIZING THE REGULATION AND
LICENSING DEPARTMENT TO SEEK AN INJUNCTION FOR A VIOLATION OF
THE PRIVATE INVESTIGATIONS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-27B-3 NMSA 1978 (being Laws 1993,
Chapter 212, Section 3, as amended) is amended to read:

"61-27B-3. LICENSE REQUIRED.--

A. It is unlawful for an individual to:

~~[A.]~~ (1) act as a private investigator,
private patrol operator, security guard, private investigations

.177935.4

underscoring material = new
[bracketed material] = delete

1 employee, private investigations manager or private patrol
2 operations manager or to make any representation as being a
3 licensee or registrant unless the individual is licensed by the
4 department pursuant to the Private Investigations Act;

5 ~~[B.]~~ (2) render physical protection for
6 remuneration as a bodyguard unless the individual is licensed
7 as a private investigator or a private patrol operator;

8 ~~[C.]~~ (3) continue to act as a private
9 investigator, private patrol operator, security guard, private
10 investigations employee, private investigations manager or
11 private patrol operations manager if the individual's license
12 issued pursuant to the Private Investigations Act has expired;

13 ~~[D.]~~ (4) falsely represent that the individual
14 is employed by a licensee; or

15 ~~[E.]~~ (5) practice polygraphy for any
16 remuneration without a license issued by the department in
17 accordance with the Private Investigations Act.

18 B. It is unlawful for a private patrol operator to
19 contract with or employ a person to perform duties as a
20 security guard, private patrol operations manager or private
21 patrol employee unless that person is licensed or registered by
22 the department to perform those duties pursuant to the Private
23 Investigations Act."

24 Section 2. Section 61-27B-27 NMSA 1978 (being Laws 1993,
25 Chapter 212, Section 14, as amended) is amended to read:

.177935.4

1 "61-27B-27. HEARING--PENALTIES.--

2 A. A person who is denied a license or registration
3 or who has a license or registration suspended or revoked shall
4 be entitled to a hearing before the department if within twenty
5 days after the denial, suspension or revocation a request for a
6 hearing is received by the department. The procedures of the
7 Uniform Licensing Act shall be followed pertaining to the
8 hearing to the extent that they do not conflict with the
9 provisions of the Private Investigations Act.

10 B. In accordance with the provisions of the Uniform
11 Licensing Act, and in addition to other penalties provided by
12 law, the department may impose the following:

13 (1) for a violation of the Private
14 Investigations Act, a civil penalty not to exceed one thousand
15 dollars (\$1,000) for each violation; ~~and~~

16 (2) against a person who is found by the
17 department to be engaging in a practice regulated by the
18 department without an appropriate license or registration,
19 civil penalties not to exceed ~~[one thousand dollars (\$1,000)]~~
20 five thousand dollars (\$5,000); and

21 (3) against a private patrol operator who
22 contracts with or employs another person to engage in a
23 practice regulated by the department under the Private
24 Investigations Act without an appropriate license or
25 registration, civil penalties not to exceed five thousand

.177935.4

1 dollars (\$5,000)."

2 Section 3. Section 61-27B-32 NMSA 1978 (being Laws 1993,
3 Chapter 212, Section 20, as amended) is amended to read:

4 "61-27B-32. PENALTIES.--

5 A. A person who engages in a business regulated by
6 the Private Investigations Act who fraudulently makes a
7 representation as being a licensee or registrant is guilty of a
8 misdemeanor and ~~[if convicted]~~ for a first or second conviction
9 shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

10 B. An individual who fraudulently represents that
11 the individual is employed by a licensee is guilty of a ~~[petty]~~
12 misdemeanor and ~~[if convicted]~~ for a first or second conviction
13 shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

14 C. A private patrol operator who contracts with or
15 employs another person to engage in a practice regulated by the
16 department under the Private Investigations Act without an
17 appropriate license or registration is guilty of a misdemeanor
18 and for a first or second conviction shall be sentenced
19 pursuant to Section 31-19-1 NMSA 1978.

20 ~~[G.]~~ D. A person who violates a mandatory
21 requirement, as set forth by the department in rule, of the
22 Private Investigations Act is guilty of a ~~[petty]~~ misdemeanor
23 except as provided in Subsection A of this section and ~~[if~~
24 ~~convicted]~~ for a first or second conviction shall be sentenced
25 pursuant to Section 31-19-1 NMSA 1978.

.177935.4

1 E. Upon a third or subsequent conviction pursuant
2 to this section, an offender is guilty of a fourth degree
3 felony and upon conviction shall be sentenced pursuant to the
4 Criminal Sentencing Act."

5 Section 4. A new section of the Private Investigations
6 Act is enacted to read:

7 "[NEW MATERIAL] ENFORCEMENT--INJUNCTION.--

8 A. Whenever the department has reasonable cause to
9 believe that a person has violated a provision of the Private
10 Investigations Act or a rule adopted pursuant to that act and
11 the violation creates a safety risk for the community and
12 immediate enforcement is deemed necessary, the department may
13 issue a cease and desist order to require the person to cease
14 the violation. At any time after service of the order to cease
15 and desist, a person may request a prompt hearing to determine
16 whether a violation occurred. If a person fails to comply with
17 a cease and desist order within twenty-four hours, the
18 department may bring a suit for a temporary restraining order
19 and for injunctive relief to prevent further violations.

20 B. Whenever the department possesses evidence that
21 indicates a person has engaged in or intends to engage in an
22 act or practice constituting a violation of the Private
23 Investigations Act or a rule adopted pursuant to that act, the
24 department may seek, and the district court of Santa Fe county
25 may issue, an order temporarily or permanently restraining or

.177935.4

1 enjoining the act or practice. The department shall not be
2 required to post a bond when seeking a temporary or permanent
3 injunction."

underscoring material = new
[bracketed material] = delete